

IN THE MATTER OF WILLYS OVERLAND MOTORS, INC. and THE PATTERN
MAKERS LEAGUE OF NORTH AMERICA

Case No. R-1445.—Decided October 4, 1939

Automobile Manufacturing Industry—Labor Organizations Involved: recognition of split in parent labor organization; two groups constituting separate labor organizations affiliated with C. I. O. and A. F. L.—*Investigation of Representatives:* controversy concerning representation of employees: rival organizations, employer's refusal to recognize petitioner—*Unit Appropriate for Collective Bargaining:* subdivision composed of pattern and model makers in research and experimental department; controversy as to craft or plant-wide units, either appropriate; desires of pattern and model makers to determine; prior decision of Board, establishing unit inclusive of employees affected, will not preclude determination on merits, since craft representative relied on assurance by Board agent that intervention in prior proceeding was not necessary to protect craft's position—*Election Ordered:* to determine appropriate unit and representatives thereof; both A. F. L.-U. A. W. and C. I. O.-U. A. W. to be placed on ballot unless Regional Director notified of desire not to be represented thereon.

Mr. Bernard Bralove, for the Board.

Ritter & Dougherty, by *Mr. C. Milton McCreery*, of Toledo, Ohio, for the Company.

Mr. Edward Lamb, by *Mr. Lowell Gorlich*, of Toledo, Ohio, for the U. A. W.

Mr. C. D. Madigan, for the P. M. L.

Mr. Frederick W. Killian, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On March 27, 1939, The Pattern Makers League of North America, herein called the P. M. L., affiliated with the American Federation of Labor, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Willys Overland Motors, Inc., Toledo, Ohio, herein called the Company, and requesting an investigation and certification of representa-

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tives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

On June 2, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On July 14, 1939, the Regional Director issued a notice of hearing, copies of which were duly served on the Company, the P. M. L., International Union, United Automobile Workers of America (affiliated with the Congress of Industrial Organizations), herein called U. A. W., the Mechanics Educational Society of America, Local #4, herein called M. E. S. A., and International Association of Machinists, Local #105, herein called I. A. M.

Pursuant to notice, a hearing was held on July 27 and 28, 1939, at Toledo, Ohio, before Earl S. Bellman, the Trial Examiner duly designated by the Board. The Board, the P. M. L., and the U. A. W. were represented by counsel, and participated in the hearing. The M. E. S. A. and the I. A. M. did not appear. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. During the course of the hearing, the Trial Examiner made several rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE COMPANY AND ITS BUSINESS ¹

Willys Overland Motors, Inc., is a Delaware corporation, incorporated July 23, 1936, after a reorganization, and is engaged in the manufacture and sale of automobiles, trucks, and automobile parts. The Company maintains an office and plant at Toledo, Ohio, and an automobile, assembly plant at Maywood, California. The Company owns all the stock of Willys Export Corporation, an Ohio corporation, which sells the Company's products in foreign countries, and also all the capital stock of Willys of Canada, Ltd., a Canadian corporation, which purchases products from the Company for resale in the Dominion of Canada. This proceeding concerns only the Company's employees in Toledo.

¹ The findings in this section are based upon a stipulation of facts.

The principal raw materials used by the Company in its manufacturing operations are steel, fabrics, and paint. It also uses large quantities of fabricated materials, such as stampings, engines, tires, glass, and automotive parts. In the fiscal year ending September 30, 1938, the Company purchased approximately \$5,000,000 worth of these materials, and approximately 60 per cent of these various raw and fabricated materials were purchased and transported from sources outside the State of Ohio to the Company's Toledo plant. Approximately 95 per cent of the automobiles, trucks, and automobile parts manufactured by the Company were sold outside the State of Ohio during the fiscal year ending September 30, 1938, and during that year, the total sales of the Company, including both cars and parts, amounted to \$11,088,445.93.

The Company's Toledo plant employed and had working approximately 530 employees on July 13, 1939, and during the week of June 19 to 23, 1939, the Company employed and had working a maximum of 1,900 employees.

II. THE ORGANIZATIONS INVOLVED

International Union, United Automobile Workers of America, Local No. 12, is a labor organization which at the time the petition herein was filed was affiliated with the Congress of Industrial Organizations. It admits to membership all employees of the Company at Toledo, Ohio, including clerical and office workers but excluding those with the power to hire and discharge, and its membership also includes employees of a number of other employers in Toledo, Ohio. The split occurring early in 1939 within the membership of the International Union, United Automobile Workers of America, of which 12 is a local, has been recognized by the Board as establishing two separate labor organizations: one affiliated with the Congress of Industrial Organizations, herein called the C. I. O.-U. A. W.; and the other affiliated with American Federation of Labor, herein called the A. F. L.-U. A. W. However, the record in the present proceeding fails to show that prior to the hearing any affirmative action with reference to this controversy was taken by Local 12. Consequently, we are unable definitely to determine whether Local 12 has reaffirmed its affiliation with the Congress of Industrial Organizations, or whether it has become affiliated with the American Federation of Labor.

The Pattern Makers League of North America is a labor organization affiliated with the American Federation of Labor. It has chartered The Pattern Makers League of Toledo and admits practical pattern makers to membership.

III. THE QUESTION CONCERNING REPRESENTATION

On January 18, 1939, the Board issued its Amendment to Decision, Supplemental Decision and Certification of Representatives² in which the Board certified the U. A. W. as the exclusive representative of the employees of the Company in a unit consisting of all employees at Toledo, Ohio, including foremen, assistant foremen, foreladies, factory clerical employees, plant-protection employees, timekeepers, time checkers, pay-roll clerks, draftsmen, designers, engineers, and employees in the experimental and research building, but excluding department heads, division superintendents, general foremen, time-study employees, budget clerks, paymasters, assistant paymasters, safety engineers, the private secretaries of the personnel manager, the works manager, the head of the labor-relations committee, and the head of the time-study department, die sinkers, the maintenance mechanics and maintenance machinists, and the clerical employees in the Administration Building, for purposes of collective bargaining. This unit included the pattern and model makers employed by the Company.

The P. M. L. contends, in this proceeding, that the pattern and model makers, who are employed in the research and experimental department, constitute a separate appropriate unit for purposes of collective bargaining. This contention is based upon a change in the departmental structure of the research and experimental department made by the Company in April or May 1938 at which time the Company established a subdivision of the department composed exclusively of pattern and model makers. From this time, the employees in the subdivision devoted most of their time to making Keller models, a type of work which had not previously been performed in the research and experimental division but which had been contracted for between other firms in Toledo and the Company. This change had been made prior to the June 2 to 7, 1938, hearing in the earlier representation proceeding which resulted in the certification of the U. A. W. as exclusive representative of the employees in the above-described unit, which included the pattern and model makers.

The record discloses that the employment of these pattern and model makers is seasonal and, as is common in the industry for this type of work, lasts from about January to July. The record also shows that after establishment of the subdivision in April or May 1938 and immediately preceding and during the June 2 to 7, 1938, hearing in the earlier representation proceeding, there were employed in the subdivision three pattern and model makers affiliated

² 10 N. L. R. B. 160.

with the P. M. L., that no additional pattern and model makers were hired until January 1, 1939, and that from January to July 1939 there was a maximum of 13 or 14 pattern and model makers affiliated with P. M. L. employed in the subdivision.

The P. M. L. was not served or notified in the earlier representation proceeding. It did, nevertheless, make an effort to protect its rights in the premises. The record shows that the attorney for the P. M. L., upon being informed of the proceeding by its business manager, consulted with an agent for the Board for the purpose of protecting the rights of the P. M. L. and was advised that it would not be necessary for the P. M. L. to intervene in the proceeding and that it being such short notice, he, the Board agent, would see what he could do to protect the rights of the P. M. L. in the hearing. The exact form of protection is not specified in the record and it may well be that the attorney for the P. M. L. and the Board's agent misunderstood each other as the record itself is vague as to what actually happened. However, since there is a showing of reliance by the P. M. L. on certain expressed intentions of an agent for the Board, we will not regard our previous finding on the appropriate unit as precluding a determination of this proceeding on the merits.

There were pattern and model makers employed in the subdivision when the petition in this proceeding was filed and for some months afterwards. It was not the fault of the P. M. L. that the hearing was delayed until after the pattern and model makers' season was over. The fact that the season for these employees lasts only a few months at best is a factor which must be considered in determining the issues here involved.

We find that a question has arisen concerning representation of employees of the Company.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Company described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

Since January 18, 1939, the date of the certification of the U. A. W., that organization has bargained with the Company for the employees included in the unit for which it was certified as exclusive representative but to the date of hearing no collective agreement had even-

tuated.³ The U. A. W. asserted at the hearing that it intended to continue to represent the pattern and model makers and to seek a collective agreement with the Company covering them.

The record shows that the P. M. L. has on occasion, over a period of many years prior to the formation of the subdivision, furnished pattern makers for the research and experimental department of the Company. It furnished approximately 14 or 15 pattern and model makers for the subdivision between May 1938 and June 1939. The business manager of the P. M. L. maintained an understanding with the Company, through the foremen of the subdivision, concerning the wages of the pattern and model makers. After the certification of U. A. W. on January 18, 1939, the P. M. L., for the first time, attempted to secure a collective agreement with the Company, but the Company refused to consider the proposal because of doubt arising as to the appropriate unit by reason of the Board's certification.

It is clear on the record that the pattern and model makers perform a separate, skilled, and specialized function within the general scheme of the research and experimental division. From May 1938 to July 1939, their work consisted mostly of making models for Keller machines and, although occasionally employees from other divisions of the plant were detailed to the research and experimental department and worked on models, nevertheless the pattern and model makers affiliated with the P. M. L. performed by far the greater part of that work.

The contentions of both the P. M. L. and the U. A. W. with respect to pattern and model makers seem equally plausible. The industrial unit would seem to be as effective and appropriate for bargaining purposes as a separate bargaining unit and vice versa. We will, therefore, follow our usual rule and hold that the determining factor will be the desires of the pattern and model makers themselves. The record is not conclusive on this point. We find that the question which has arisen concerning representation of the pattern and model makers can best be resolved by means of an election by secret ballot to determine by which organization they wish to be represented.

As we have noted above, two separate labor organizations, the C. I. O.-U. A. W., and the A. F. L.-U. A. W., have resulted from the split occurring early in 1939 within the membership of the International Union, United Automobile Workers of America, and the present record is silent as to whether Local 12 has reaffirmed its affiliation with the Congress of Industrial Organizations or has become affiliated with the American Federation of Labor.

³ There was a written agreement in effect between the U. A. W. and the Company from early 1936 to early 1937, but the record does not disclose whether or not the pattern and model makers were covered by that agreement.

The pattern and model makers shall vote at the election to determine whether they desire to be represented by the P. M. L., the C. I. O.-U. A. W., or the A. F. L.-U. A. W., for purposes of collective bargaining, or by none of the three labor organizations. On the results of the election will depend the appropriate unit. If the employees choose the P. M. L. they will constitute a separate and distinct appropriate unit; otherwise the P. M. L.'s petition will be dismissed, and the pattern and model makers will remain merged in the larger unit.

Since there may be some question as to whether the labor organization with which Local 12 is not affiliated will desire to participate in the election herein ordered, we shall withdraw from the ballot the name of any labor organization which within 5 days after receipt of Notice of Direction of Election notifies the Regional Director for the Eighth Region that it desires such withdrawal.

We shall make provision for determining eligibility to participate in the election which will most closely reflect the employment situation in the subdivision at the time of the election. We shall, therefore, direct that an election be held within 60 days after the resumption of operations in the subdivision of the research and experimental department. All the pattern and model makers in the subdivision of the research and experimental department of the Company's plant in Toledo who shall be employed by the Company during the pay-roll period immediately preceding the date of the election, except those who, having been hired after operations shall have been resumed, shall have quit or been discharged for cause before the election, shall be eligible to participate in the election.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

A question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Willys Overland Motors, Inc., Toledo, Ohio, an election by secret ballot shall

be conducted within 60 days after the resumption of operations in the subdivision of the research and experimental department of the Willys Overland Motors, Inc., Toledo, Ohio, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent of the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the pattern and model makers of Willys Overland Motors, Inc., Toledo, Ohio, employed in the research and experimental department by the Company during the pay-roll period immediately preceding the date of the election, including those who did not work during such pay-roll period because they were ill, on vacation, or temporarily laid off, but excluding those who, having been hired after resumption of operations, shall have quit or been discharged for cause, to determine whether they desire to be represented by The Pattern Makers League of North America (A. F. of L.), by International Union, United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, or by International Union, United Automobile Workers of America, affiliated with the American Federation of Labor, for purposes of collective bargaining, or by none of the three labor organizations.

MR. EDWIN S. SMITH, concurring:

Although the P. M. L. has not had formal contractual relations with the Company, that organization has, for some years, supplied the company with pattern and model makers and maintained a wage scale with the Company for such workers. I regard this as sufficient warrant for permitting pattern and model makers a choice between bargaining separately and merging their interests with those of their fellow employees in the larger unit.⁴ I agree with Chairman Madden's opinion that final determination of the unit should await the outcome of the separate election for the pattern and model makers.

MR. WILLIAM M. LEISERSON, concurring:

I concur in the direction of an election among the pattern and model makers employed by the Company, but I do not think it is necessary to postpone a final determination of the unit pending the election. I would find now that the pattern and model makers constitute a separate appropriate unit.

⁴ See my concurring opinion in the similar case of *Matter of The William Powell Company and Pattern Makers Association of Cincinnati*, 12 N. L. R. B. 115.